

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

WEYERHAEUSER COMPANY, WASHINGTON
AGGREGATES AND CONCRETE ASSOC., INC.,
ALPINE SAND & GRAVEL, INC., GLACIER
NORTHWEST, INC. dba CALPORTLAND,
GRANITE CONSTRUCTION COMPANY, MILES
SAND & GRAVEL COMPANY, QUALITY ROCK
PRODUCTS, INC. AND SEGAL PROPERTIES,
LLC.

Petitioners,

v.

THURSTON COUNTY,

Respondent.

Case No. 10-2-0020c

COMPLIANCE ORDER

THIS Matter came before the Board for hearing on March 14, 2013, following submittal of Thurston County's Mineral Resource Lands Second Compliance Report.¹ The Second Compliance Report was filed in response to the Board's June 17, 2011, Amended Final Decision and Order (AFDO) which found Thurston County's Resolution No. 14401 and Ordinance No. 14402 to be noncompliant with the Growth Management Act and the Compliance Order of July 17, 2012. The latter order found Thurston County had achieved compliance with RCW 36.70A.172 through its inclusion of Best Available Science but remained noncompliant with RCW 36.70A.170(1) and (2). Noncompliance with RCW 36.70A.170(1) and (2) related to the County's preclusion of dual designation of forest lands and mineral resource lands of long-term commercial significance and dual designation of critical areas and mineral resource lands of long-term commercial significance.

¹ Filed January 28, 2013

1 Weyerhaeuser Company filed a response stating it had no objection to the County's
2 decision to allow co-designation of designated forest lands and mineral resource lands.²
3 Neither Washington Aggregates and Concrete Association (WACA)³ nor Segale Properties
4 LLC filed objections to the Compliance Report by February 25, 2013, the time set by Board
5 order.⁴ WACA notified the Board through its counsel, Ramona L. Monroe, that it had not
6 filed any objections to a finding of compliance and did not intend to participate in the
7 compliance hearing.
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10 Board members Margaret Pageler, Nina Carter, and William Roehl took part in the
11 telephonic Compliance Hearing, with Mr. Roehl presiding. Neither Weyerhaeuser nor
12 Segale Properties, LLC participated. Thurston County was represented by Jeffrey G.
13 Fancher.
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15 I. BURDEN OF PROOF

16 Following a finding of noncompliance, the jurisdiction is given a period of time to adopt
17 legislation to achieve compliance.⁵ After the period for compliance has expired, the Board is
18 required to hold a hearing to determine whether the local jurisdiction has achieved
19 compliance.⁶ For purposes of Board review of the comprehensive plans and development
20 regulations adopted by local governments in response to a noncompliance finding, the
21 presumption of validity applies and the burden is on the challenger to establish the new
22 adoption is clearly erroneous.⁷
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25 In order to find the County's action clearly erroneous, the Board must be "left with the firm
26 and definite conviction that a mistake has been made."⁸ Within the framework of state goals
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29 ² Weyerhaeuser's Response to Thurston County's Second Compliance Report, filed February 11, 2013.

30 ³ Petitioner Washington Aggregates and Concrete Association includes, among others, Alpine Sand & Gravel,
31 Inc., Glacier Northwest, Inc. dba CalPortland, Granite Construction Company, Miles Sand & Gravel Company,
32 Quality Rock Products, Inc., and Segale Properties, LLC.

⁴ Order Granting Extension Of Briefing Schedule.

⁵ RCW 36.70A.300(3)(b).

⁶ RCW 36.70A.330(1) and (2).

⁷ RCW 36.70A.320(1), (2) and (3).

⁸ *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

and requirements, the Board must grant deference to local governments in how they plan for growth:

The legislature intends that the board applies a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. . . . Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.⁹

While Thurston County's legislative action taken to cure noncompliance is entitled to a presumption of validity, the County must still demonstrate it has addressed the area of noncompliance notwithstanding the lack of objection by a petitioner.¹⁰

II. DISCUSSION

The Board's July 17, 2012, Compliance Order made the following findings of continuing non-compliance:

1. Thurston County adopted comprehensive plan and development regulation criteria precluding dual designation of forest lands and mineral resource lands of long-term commercial significance without first determining those two kinds of natural resource lands were incompatible and, further, without ascertaining which has the greater long-term commercial significance should such dual designation be found incompatible, in violation of RCW 36.70A.170(1) and (2), WAC 365-190-020(5) and WAC 365-190-040(7)(b);
2. Thurston County adopted comprehensive plan designation criteria precluding dual designation of mineral resource lands of long-term commercial significance and critical areas in violation of RCW 36.70A.170(1) and (2), WAC 365-190-020 and WAC 365-190-040.

⁹ RCW 36.70A.3201, in part.

¹⁰ *Abenroth, et al. v. Skagit County*, Case No. 97-2-0060c coordinated with *Skagit County Growthwatch, et al. v. Skagit County*, Case No. 07-2-0002, Order on Reconsideration, at 4-6 (Jan 21, 2009).

Issue to Be Decided

Whether Thurston County's most recent compliance action appropriately addresses the violations of RCW 36.70A.170(1) and (2) and related regulations?

On compliance the County adopted Resolution 14847 and Ordinance 14848 which revised Chapter 3 of the Comprehensive Plan and Chapter 20.30B of the Thurston County Code. A result of those actions was to allow the co-designation of forest lands and mineral resource lands (MRL) thus addressing the violations of RCW 36.70A.170(1) and (2), WAC 365-190-020(5) and WAC 365-190-040(7)(b).

The County's compliance legislation also allows the co-designation of critical areas and MRL. The Comprehensive Plan and Thurston County Code section 20.30B.055 now include the following proviso regarding MRL in certain critical areas: "The presence of critical areas on the site may prohibit or restrict mineral extraction operations." Removal of the MRL/critical area co-designation preclusion and addressing potentially incompatible or inappropriate uses through development regulations addresses the Board's concern regarding violations of RCW 36.70A.170(1) and (2), WAC 365-190-020 and WAC 365-190-040.

III. ORDER

The Board finds Thurston County has achieved compliance with RCW 36.70A.170(1) and (2), WAC 365-190-020 and WAC 365-190-040. This case is closed.

ENTERED this 15th day of March, 2013.

William Roehl, Board Member

Margaret Pageler, Board Member

Nina Carter, Board Member

1 **Note: This is a final decision and order of the Growth Management Hearings Board**
2 **issued pursuant to RCW 36.70A.300.¹¹**
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31 ¹¹ Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on
32 all parties within ten days of mailing of the final order. WAC 242-3-830(1), WAC 242-3-840.
Any party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty
days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.